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CRIMES AND OFFENSES

Dangerous Drugs: Penalties for Anabolic Steroids Increased

CODE SECTIONS: O.C.G.A. §§ 16-13-71.1 (new), 16-13-79
(amended)

BILL NUMBER: HB 71

ACT NUMBER: 346

SUMMARY: The Act defines "anabolic steroids" and provides greater penalties for the distribution of, or the intent to distribute, anabolic steroids.

EFFECTIVE DATE: March 30, 1989

History

The 1988 Summer Olympics saw Canadian sprinter Ben Johnson stripped of his gold medal in the 100 meter dash due to a positive postrace test for an anabolic steroid, stanozolol.¹ This incident touched off a wide-reaching inquiry into the use of anabolic steroids by athletes in both the United States and Canada.² The publicity over the Ben Johnson case contributed to the introduction of HB 71.³ The sponsors of HB 71, all of whom are pharmacists,⁴ were concerned about anabolic steroid use among teenagers. The Act increases the penalties for the distribution of, or the intent to distribute, anabolic steroids.⁵ The bill's sponsors hope the penalties will deter further abuse of anabolic steroids, especially by teenagers.⁶ The State Board of Pharmacy supported and helped draft HB 71 because of the increased number of black market

1. Witt, *Coach: Johnson Used Steroids Since 1981*, Gwinnett Daily News, Mar. 2, 1989, at C1, col. 2; *Coach: Johnson Began Taking Steroids in '81*, Marietta Daily J., Mar. 2, 1989, at C8, col. 1. Charles Francis, Johnson's coach, stated that most of Canada's top sprinters have been injecting anabolic steroids for years. *Id.*

2. Witt, *supra* note 1; see also *Bodybuilder Faces Charges Over Steroids*, Atlanta J. and Const., Mar. 12, 1989, at A4, col. 1 [hereinafter *Bodybuilder*].

3. Telephone interview with Representative Bill Atkins, House District No. 21 (Mar. 22, 1989) [hereinafter *Atkins Interview*].

4. Representative Bobby Parham of House District No. 105, Representative Larry Parrish of House District No. 109, and Representative Bill Atkins of House District No. 21 are all pharmacists. MEMBERS OF THE GENERAL ASSEMBLY OF GEORGIA FIRST SESSION OF 1989-90 TERM (Jan. 1989) (available at Senate Public Information Office and House Information Office, State Capitol of Georgia).

5. O.C.G.A. § 16-13-79 (Supp. 1989).

6. *Atkins Interview*, *supra* note 3.

anabolic steroid sales.⁷ Moreover, federal drug enforcement activities are focusing more on the trafficking in illegal steroids, partly due to the Omnibus Drug Supplemental Appropriations Act of 1987.⁸

Anabolic steroids are synthetic male hormones⁹ which have legitimate uses in the treatment of several medical conditions.¹⁰ Athletes have used anabolic steroids "for more than two decades in the belief that [the hormones] increase body mass, muscle tissue, strength, and aggressiveness."¹¹ There are no reputable studies, however, which show that these agents increase muscle mass.¹² Nevertheless, there are probable benefits to athletic performance from using the drug.¹³

The medical profession has documented the adverse effects of anabolic steroids.¹⁴ In males, anabolic steroids affect the reproductive system by reducing male hormone production and causing temporary infertility.¹⁵ Enlargement of the male breasts is a common side-effect.¹⁶ Also, anabolic steroids affect liver function and can cause liver cancer.¹⁷ The use of anabolic steroids produces elevated low-density lipoprotein cholesterol levels, accounting for the rapid rise in early heart attacks and hypertension with anabolic steroid abuse.¹⁸ Acne, irritability, and aggressiveness also increase with the use of anabolic steroids.¹⁹

Anabolic steroids produce masculinizing effects in women.²⁰ Some of these effects remain even after discontinuing the use of the

7. The State Board of Pharmacy estimated that 80% of the anabolic steroids in the State come from the black market. *Id.*

8. *Id.* *Bodybuilder*, *supra* note 2; see also Omnibus Drug Supplemental Appropriations Act of 1987, Pub. L. No. 99-591, 100 Stat. 3341-56, Title II, referring to the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570. The Omnibus Drug Supplemental Appropriations Act of 1987 did not specifically mention anabolic steroids, but the activities of the U.S. Customs officials in the bodybuilder's indictment for smuggling illegal steroids from Brazil is evidence of the federal concern. *Bodybuilder*, *supra* note 2.

9. COUNCIL ON SCIENTIFIC AFFAIRS, *Drug Abuse in Athletes: Anabolic Steroids and Human Growth Hormone*, 259 J. A.M.A. 1703, 1703 (1988). Anabolic steroids are synthetic androgenic hormones that have strong androgenic effects in large doses, and have a higher anabolic to androgenic ratio of activity than does testosterone. There are both parenteral (intravenous or intramuscular) and oral forms of the drugs. *Id.* This report is from the Council on Scientific Affairs of the American Medical Association and was adopted by the House of Delegates of the American Medical Association at the 1986 Interim Meeting. *Id.*

10. *Id.* Examples include "certain anemias, hereditary angioedema, certain cases of breast cancer, ... possibly osteoporosis ... [and] male hypogonadism." *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 1704.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* Examples of masculinizing effects include "hirsutism, deepened voice, oily

drugs.²¹ In children, anabolic steroids "may accelerate pubertal changes and limit eventual adult height by causing premature skeletal maturation and closure of the [growth centers of bones]."²²

The American Medical Association is calling for more regulation and education regarding anabolic steroids, with the hope of curbing the illegal distribution of these drugs.²³ As an example of the problem among teenagers, a leading national sports magazine reported the death of a high school football player in Ashtabula, Ohio, due to anabolic steroids.²⁴ The death of the youth illustrates the dangers of anabolic steroids and the need for their more stringent regulation, particularly in relation to minors.²⁵

In response to the growing problem of anabolic steroid abuse, the sponsors introduced HB 71 to increase the penalties for the distribution of, or the intent to distribute, illicit anabolic steroids.²⁶ To the sponsors' knowledge, no other state had such a law, but several are considering increasing penalties for illicit anabolic steroid distribution.²⁷

HB 71

The Act adds a new section, 16-13-71.1. This section defines a subgroup of dangerous drugs called "anabolic steroids."²⁸ By defining anabolic steroids separately, the Act permits a harsher penalty for violation of the Dangerous Drug Act²⁹ for this class of drugs than it permits for

skin, acne, male pattern baldness, menstrual irregularity including amenorrhea, breast atrophy, clitoral hypertrophy, and increased libido." *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 1705.

24. Telanger & Noden, *The Death of an Athlete*, SPORTS ILLUSTRATED, Feb. 20, 1989, at 68 (Coincidentally, this publication occurred the same week as the final Senate vote on HB 71). According to the pathologist who performed the autopsy, the death of Benji Ramirez at age 17 was due to cardiac arrhythmia caused by a diseased and enlarged heart. Benji Ramirez had been taking anabolic steroids, and the coroner stated that the death was most likely the result of anabolic steroid abuse. *Id.* at 71.

25. *Id.*

26. Atkins Interview, *supra* note 3.

27. *Id.*

28. O.C.G.A. § 16-13-71.1 (Supp. 1989). This statute reads: "For the purposes of this article, the term 'anabolic steroid' means the naturally occurring androgens or derivative of androstane and testosterone and its ester, including but not limited to methyltestosterone, nandrolone, oxymetholone, oxandrolone, dromostanolone, ethylestrenol, and stanozolol." *Id.* These drugs are part of the list of dangerous drugs in O.C.G.A. § 16-13-71(b), and are numbered in this section as follows: methyltestosterone (606), nandrolone (636), oxymetholone (673), oxandrolone (667), dromostanolone (324), ethylestrenol (375), and stanozolol (887).

29. O.C.G.A. §§ 16-13-71 to -79 (1982).

other classes of drugs.³⁰ This is the intent of the sponsors of HB 71, particularly in the case of abuse by a minor.³¹

The original bill underwent one revision in the House Judiciary Committee. The bill was amended to specifically exempt licensed veterinarians and steroid use prescribed for animals.³² The intent of the bill was to regulate human usage and abuse only.³³ Also, the sponsors believed that the record keeping requirements would be too burdensome for veterinarians.³⁴ These factors, along with the knowledge that a bill limited to regulation of use by humans would be easier to enact and enforce, prompted the sponsors to limit the scope of the bill to humans only.³⁵ The bill passed the House and Senate without further amendments.³⁶

The Act increases the penalties for the sale, distribution, or possession of the class of drugs called "anabolic steroids"³⁷ from a simple misdemeanor to "imprisonment for not less than one year nor more than three years or by a fine not to exceed \$5000.00, or both."³⁸ But the penalty is more severe for distribution, sale, or possession with the intent to distribute, to anyone under the age of 18.³⁹

The State Board of Pharmacy, which controls the designation of dangerous drugs,⁴⁰ and the Director of the Georgia Drugs and Narcotics Agency both participated in the drafting of the Act.⁴¹ The various violations of the Act, such as selling or possessing with the intent to distribute, will likely be separate offenses. In *Gee v. State*,⁴² the Georgia Supreme Court held that the offenses of selling and possession are separate and distinct, and may be punished separately and additively.⁴³ Therefore, the Director may bring charges for both the possession and distribution of anabolic steroids, with the offenses being separate and the penalties additive to one another.⁴⁴

30. Atkins Interview, *supra* note 3.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Final Composite Status Sheet, Mar. 15, 1989.

37. O.C.G.A. § 16-13-71.1 (Supp. 1989); *see supra* note 28 for definition and list of included drugs.

38. O.C.G.A. § 16-13-79(b) (Supp. 1989).

39. O.C.G.A. § 16-13-79(c) (Supp. 1989). The Act provides for "imprisonment for not less than one year nor more than six years or by a fine not to exceed \$10,000.00, or both." *Id.*

40. 1975 Op. Att'y Gen. 23.

41. Atkins Interview, *supra* note 3.

42. 225 Ga. 669, 171 S.E.2d 291 (1969) (neither the offense of selling or possessing prohibited drugs is a "necessary element" in the other offense).

43. *Gee v. State*, 225 Ga. 669, 171 S.E.2d 291 (1969).

44. O.C.G.A. § 16-13-71 (1988); 1975 Op. Att'y Gen. 23. "[C]ontrol of dangerous drugs

With the passage of this Act the sponsors feel that anabolic steroid abuse, particularly on the black market, will decrease under the threat of increased penalties.⁴⁵ Also, the stiffer penalties for distribution to minors should serve as a strong deterrent to drug pushers and unscrupulous coaches, and will further protect Georgia's youth.⁴⁶

T. Wallace

is vested with the State Board of Pharmacy and State Drug Inspector"; the inspector is now the Director of Georgia Drugs and Narcotics Agency. 1975 Op. Att'y Gen. 23.

45. Atkins Interview, *supra* note 3.

46. *Id.*